

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CLERK
U.S. DISTRICT COURT
JAN 13 PM 13 04
DISTRICT OF MASS.

C.A. No. 04-12637

JOSE DAVILA
Plaintiff

-

KATHLEEN DENNEY et al's
defendants

PLAINTIFF'S MOTION TO DISMISS
SAYO COMPLAINT WITHOUT PREJUDICE

Now comes the plaintiff, Jose Davila,
request that this Honorable Court dismissed his
lawsuit without prejudice,

In support of this motion, plaintiff referred
to his attached affidavit.

Respectfully submitted
Jose Davila

Jose Davila
P.O. Box 100
S. Walpole MA 02071

1/12/07

AFFIDAVIT

I, Jose Davila, depose and state the following under oath

#1, From a assistance of another inmate, he file a lawsuit on behalf of me, (no # 04-12637) that is the centered piece at this court

#2, on, 1/5/04, I received a "memorandum of order" by the Honorable Judge Stearns, stating that I have 42 days to show cause why this action should not be dismissed or in the alternate to file an amended Complaint.

#3, one of the grounds that the courts wanted to dismissed my complaint was on the grounds of failure to exhaust administrative Remedies.

#4, As describe in paragraph #3, I was told by another inmate that when you file a lawsuit involving medical claims you need not file any grievance (see - EX: A, arrow pointing to medical etc.) so therefore I was under the impression that medical legal claims need not to be grieved.

#5. The other issues are, I need to sit down with my family lawyer and discussed this process because I do have merits it just has to be put together professionally, and I am unschooled when it comes to the field of law.

#6. Instead of me filing an amended complaint correcting the right defendants names I am seeking an professional assistance or even a inmate that has great knowledges of the law.

#7, I am requesting that this Court allowed me to dismiss this complaint without prejudice, so I can refile it at a different time and day.

Signed under pains
and penalties of perjury
Jose Davila
Jose Davila

Filing a Grievance to Protect Your Right to Sue State Prison Officials Under State and Federal Law

Laws that Require Prisoners to File Grievances

- Both state and federal law require that prisoners suing about any incident or thing that happens in prison must first "exhaust administrative remedies" by using available grievance and other remedies before filing suit. Prison Litigation Reform Act, 42 U.S.C. §1997e, and M.G.L. c. 127, §38F. In most cases, this means using the general institutional grievance procedure and appealing grievances. All of the grievance rules are in 103 CMR 491.00, and you should refer to them if you have any questions.

→ If you file suit without filing a grievance first, the court will dismiss the suit.

- In the following circumstances, instead of filing a grievance you must use a different procedure because there are special appeal procedures covering these situations (103 CMR 491.08, M.G.L. c. 127, §38E):
 - classification decisions and recommendations, including identification as a sex offender;
 - disciplinary decisions and recommendations;
 - decisions and recommendations about therapeutic diets;
 - medical or clinical decisions about your physical or mental condition; however, you **can** grieve matters related to **access** to medical or mental health care.
- In addition, you do not need to exhaust administrative remedies when filing a petition for a writ of habeas corpus seeking only release from unlawful imprisonment.
- Even if you believe that the grievance system is unfair or pointless, you must file a grievance if you want to protect your right to file suit.

Guard Brutality and Grievances

- If you want to sue prison staff for assaulting you, you **must** file a grievance specifically about the assault.

Deadlines

- You must file your grievance **within 10 working days** of the incident you are grieving or within 10 working days of becoming aware of the problem or issue. 103 CMR 491.08(4)
- You should get a denial or resolution of your grievance within 10 working days of filing. 103 CMR 491.10(1)(e)
- Once you receive the response, you must file an appeal to the superintendent **within 10 working days**. 103 CMR 491.12(1)
- The superintendent has 30 working days to reply to your appeal in writing. 103 CMR 491.12(3)
- If you have already missed a deadline, **file your grievance or appeal anyway**. The courts may decide not to dismiss your case, even if you missed the above deadlines.
- If you do not get a denial or resolution of your grievance within 10 working days of filing, you should appeal to the superintendent within 20 working days of filing, stating that you take the lack of a response to be a denial of your grievance.

Emergency Grievances

- If you file a grievance about an issue where a delay in its resolution could cause a substantial risk of personal injury or other damages, mark the grievance form "EMERGENCY." 103 CMR 491.11(1).
- Emergency grievances should be responded to within **3 working days** of filing. 103 CMR 491.11(3).
- It appears that you have **10 working days** to appeal an emergency grievance.
- The superintendent must respond to your appeal with **5 working days**. 103 CMR 491.11(4).

What Should You Include in the Grievance? (103 CMR 491.09(2))

- The date of the incident;
- The institution you are currently in;
- The institution where the problem occurred;
- A brief statement of facts;
- The remedy you are requesting;
- Your signature.